



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

### **Docket Number USCG-2020-0408**

### **RIN 1625-AA00**

### **Emergency Safety Zone; Lower Mississippi River, Helena, AR**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a safety zone for emergency purposes for all waters of the Lower Mississippi River (LMR), extending from mile 660.0 to mile 663.0. This emergency safety zone is needed to protect persons, property, and infrastructure from the potential safety hazards associated with the diving and salvage effort of a sunken barge at Mississippi River Mile Marker (MM) 661.0, in the vicinity of the Helena Highway Bridge, Helena, Arkansas. Deviation from the safety zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through August 30, 2020, or until all diving and salvage work is complete, whichever occurs earlier. For the purposes of enforcement, actual notice will be used from July 13, 2020 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0408 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail LT Adam J. Paz, U.S. Coast Guard; telephone 901-521-4825, e-mail [adam.j.paz@uscg.mil](mailto:adam.j.paz@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because salvage efforts for a sunken barge mid-river will impede the safe navigation of vessel traffic and immediate action is needed to protect persons and property. Completing the full NPRM process is impracticable because we must establish this safety zone immediately.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with salvage operations in the vicinity of the Helena Highway Bridge.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Lower Mississippi River has determined that potential hazards associated with the salvage of a sunken barge will be a safety concern for anyone within a one-mile radius of the salvage operation. This rule is needed to protect persons, property, and infrastructure from the potential safety hazards associated with the diving and salvage effort of a sunken barge at Mississippi River Mile Marker (MM) 661.0, in the vicinity of the Helena Highway Bridge from July 13, 2020 through August 30, 2020, or until all diving and salvage work is complete, whichever occurs earlier.

### **IV. Discussion of the Rule**

This rule establishes a temporary safety zone from July 13, 2020 through August 30, 2020, or until all diving and salvage work is complete, whichever occurs earlier. The safety zone will cover all navigable waters of the Mississippi River from MM 660.0 to MM 663.0, extending the entire width of the river. The safety zone will only be activated when salvage work precludes safe navigation of the established channel. The duration of the zone is intended to protect persons, property, and infrastructure in these navigable waters while the salvage work is being conducted. No vessel or person will be permitted

to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. This emergency safety zone will temporarily restrict navigation on the Mississippi River from MM 660.0 through MM 663.0 in the vicinity of Helena, Arkansas, from July 13, 2020 through August 30, 2020, or until all diving and salvage work is complete, whichever occurs earlier. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 informing the public that the zone will be activated, and the rule would allow vessels to seek permission to enter the zone on a case-by-case basis.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone on the Mississippi River from MM 660.0 through MM 663.0, that will prohibit entry into this zone unless permission has been granted by the COTP Lower Mississippi River or a designated representative. The safety zone will only be enforced during short durations while salvage work precludes the safe navigation of the established channel. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### **PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS**

**AREAS.**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0408 to read as follows:

**§ 165.T08-0408 Emergency Safety Zone; Lower Mississippi River, Helena, AR.**

(a) *Location.* The following area is a safety zone: All waters of the Mississippi River from MM 660.0 through MM 663.0.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone or e-mail. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement periods.* This section will be enforced as needed from July 13, 2020 through August 30, 2020, or until all diving and salvage work is complete, whichever occurs earlier. Periods of activation will be promulgated by Broadcast Notice to Mariners.

Dated: July 13, 2020

R. S. Rhodes  
Captain, U.S. Coast Guard  
Captain of the Port Lower Mississippi River  
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